

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
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STEVEN BRANTLEY SPENCE :

No. 1:19CR54-1

MOTION TO CONTINUE SENTENCING HEARING

NOW COMES the Steven Brantley Spence, ("Spence") by and through counsel, and moves this Honorable Court for an order continuing the sentencing hearing scheduled in this action for March 17, 2021, at 9:30 a.m., in Winston-Salem, North Carolina, and in support of this Motion shows unto the Court the following:

1. On October 8, 2020, Spence pleaded guilty to two counts: (1) interstate domestic violence, in violation of 18 U.S.C. §§ 2261(a) (1) and (b) (3) (Count Three); and (2) brandishing a firearm during and in relation to a crime violence, in violation of 18 U.S.C. § 924(c) (1) (A) (ii) (Count Four). The written Plea Agreement included a provision that both parties agreed that the appropriate sentence is 30 months imprisonment on Count Three and 84 months consecutive on Count Four, for a total of 114 months. PSR ¶ 2. That portion of the Plea Agreement was made pursuant Rule 11(c) (1) (C)). PSR ¶ 2. See Docket No. 47.

2. On October 27, 2020, assigned counsel to this matter, Mr. Gregory Davis, passed away. On October 29, 2020, undersigned counsel filed a Notice of Attorney Substitution.

3. On November 5, 2020, undersigned counsel met with Spence to conduct the presentence interview with United States Probation Officer Yashira M. Patton. On January 27, 2021, the presentence report ("PSR") was disclosed. The PSR sets the advisory guideline range for Count Three at 97 to 120 months' imprisonment, based on a Total Base Offense level 30 and a Criminal History Category I. The Probation Officer recommended a downward departure to 60 months' imprisonment for Count Three. PSR ¶¶ 74-75.¹ The PSR sets the advisory guideline range for Count Four at 84 months' imprisonment to run consecutive to the other count, for a total recommended sentence of 144 months' imprisonment.² Sentencing Recommendation Page 1. This is 30 months higher than the agreed upon sentence in the Plea Agreement. PSR ¶ 2.

4. Spence is housed at Forsyth County Jail in Winston-Salem, North Carolina. Because of the number of COVID cases at the Forsyth County Jail, undersigned counsel cannot meet Spence in person; undersigned counsel cannot meet Spence over phone or

1 Based upon a Total Offense Level of 30 and a Criminal History Category I, the advisory guideline range of imprisonment is 97 to 121 months. However, the statutorily authorized maximum sentences (120 months) are less than the maximum of the applicable range; therefore, the advisory guideline range is 97 to 120 months. USSG § 5G1.2.

2 A mandatory consecutive term of seven years imprisonment is required by statute for Count Four of the Indictment. USSG § 2K2.4 (b).

virtually, either. For this reason, undersigned counsel has not been able to meet with Spence to review the presentence report, disclosed on January 27, 2021. See Docket No. 51. On February 22, 2021, undersigned filed a Position Paper Regarding Sentencing Factors, addressing legal objections to the advisory guideline calculation and 3553(s) factors. See Docket No. 53. November 5, 2020 was the last time undersigned counsel met with Spence.

5. Assistant United States Attorneys Clifton Barrett and Veronica Edmisten have indicated that the government does not object to a continuance of the sentencing hearing in this matter.

6. Undersigned advises the Court of the following unavailable dates: Ms. Clough is scheduled for annual leave on May 26, 2021, to June 4, 2021. Travel arrangements have been made.

7. Additional time is needed to meet with Spence to prepare for his sentencing hearing. A continuance will not unduly burden any state or federal entity. Spence' presentence report has already been disclosed and reviewed by the parties. While the matter will remain pending on the Court's docket, and the sentencing hearing will not be held until sometime in the future, no additional hearings will be required.

WHEREFORE Spence respectfully prays this Honorable Court for an order continuing the sentencing hearing from March

17, 2021, to such a later date as the Court may deem appropriate.

Respectfully submitted, this 1st day of March 2021.

LOUIS C. ALLEN III
Federal Public Defender

/s/ Mireille P. Clough
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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Clifton Barrett
Assistant United States Attorney

Ms. Veronica Edmisten
Assistant United States Attorney

and I hereby certify that I have emailed the document to the following non-CM/ECF participant(s):

Ms. Yashira M. Patton
United States Probation Officer

Respectfully submitted,

/s/ Mireille P. Clough
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